

Claims 1, 4, 6, 7, 9 and 12 stand rejected under 35 U.S.C. §103 as allegedly being obvious over Fuss '004 in view of Hamilton '882. In addition, Claims 3, 5 and 10 stand rejected as allegedly being obvious over Fuss in view of Gladson '270 (Claims 3 and 10) or in view of Aldridge '098 (Claim 5). These rejections are respectfully traversed.

Claim 1 of Applicant's invention relates to a tree-top mounting device comprised of an elongated housing, an elongated support slidably received within the elongated housing, and a fitting head disposed at a distal end of the elongated support. A fastener is adapted to secure the elongated housing to a tree, and a lock secures the sliding support in the elongated housing at a desired position. The housing is capable of housing substantially at least half of the elongated support.

Claim 6 relates to a tree-top mounting device that includes a mounting with an elongated housing and a sliding rod slidable within the elongated housing, and a fastener adapted to attach the elongated housing to a tree. The sliding rod has a distal end adapted to receive an ornament. In addition, a locking mechanism locks the sliding rod in the elongated housing, which is capable of housing substantially at least half of the sliding rod.

Finally, Claim 9 relates to a tree-top mounting device that includes telescoping means comprising an elongated first member slidably received in an elongated second member, and means for connecting the first member to an object. In addition, means for locking the first member and a second member together is provided, and the second member is capable of housing substantially at least half of the first member.

The Christmas tree ornament of Fuss includes a telescoping rod 18 and a tubular member 24. A spring clamp 22 secures the rod to the tree, while clamp 26 secures the housing to the tree. It should be noted that when clamps 22 and 26 are secured to members that

are relatively fixed, i.e., the limbs or branches of the tree, under normal circumstances the clamps will not move relative to one another. That is, by securing both rod 18 and tubular member 24 to the tree, the relationship between rod 18 and tubular member 24 is substantially fixed. Accordingly, there is no need for any additional component, such as a lock, to secure the rod 18 at a desired position relative to the tubular member 24.

Accordingly, Fuss fails to disclose or suggest at least a lock to secure a sliding support in an elongated housing at a desired position (Claim 1), a locking mechanism for locking a sliding rod in an elongated housing (Claim 6) or means for locking a first member and a second member together (Claim 9). Thus, Fuss fails to disclose or suggest important features of the present invention as recited in the independent claims.

Hamilton relates to a device for exhibiting advertisements in which a telescoping rod A fits within a housing C, and a thumb-screw C' allows the housing to be raised or lowered and secured to the rod A. Thumb-screw C' is necessary because the exhibiting device is free-standing and the weight of housing C would otherwise cause it to collapse to foot B. It is respectfully submitted, however, that one of ordinary skill in the art would not look to Hamilton to modify the ornament of Fuss. The Examiner suggests that the fact that Fuss does not disclose any means for locking rod 18 to tubular member 24 suggests that "any known conventional means could be used such as a thumb screw lock as demonstrated by Hamilton." However, as discussed above, the ornament of Fuss does not require any direct lock between the two telescoping members because they can be fixed against relative movement by securing the two clamps to a tree. Absent any need for such a lock, one of ordinary skill in the art would not be motivated to incorporate any direct locking device, including the thumb-screw of Hamilton, in the ornament of Fuss.

The Examiner cited Gladson for teaching a bayonet coupling attachment and Aldridge for teaching a hook and loop fastener. However, these citations are not believed to remedy the deficiencies of the citations noted above with respect to the independent claims.

Thus, independent Claims 1, 6 and 9 are patentable over the citations of record. Reconsideration and withdrawal of the §103 rejections are respectfully requested. Additionally, dependent Claims 3-5, 7, 10 and 12 recite additional features of Applicant's invention; independent consideration of the dependent claims is respectfully requested.

For the foregoing reasons, Applicants respectfully submit that the present invention is patentably defined by Claims 1, 3-7, 9, 10 and 12 and that the present application is in condition for allowance. Favorable reconsideration, withdrawal of the rejections set forth in the above-noted Office Action, and an early Notice of Allowance are requested.

Applicant's undersigned attorney may be reached in our Washington, D.C. office by telephone at (202) 530-1010. All correspondence should continue to be directed to our below-listed address.

Respectfully submitted,



Attorney for Applicant  
Mark A. Williamson  
Registration No. 33,628

FITZPATRICK, CELLA, HARPER & SCINTO  
30 Rockefeller Plaza  
New York, New York 10112-3801  
Facsimile: (212) 218-2200

MAWSDM\mm  
DC\_MAIN 153757v1